SMALL BUSINESS HANDBOOK:

Laws, Regulations and Technical Assistance Services

Foreword

DISCLAIMER

Updated: November 1997

Message from the Secretary of Labor

As Secretary of Labor, I have set five goals for the Department: first, to equip every working American with the skills to find and hold good jobs, with rising incomes throughout their lives; second, to help people move from welfare to work; third, to assure that working Americans enjoy secure pensions when they retire; fourth, to guarantee every American a safe, fair and equal opportunity workplace; and, fifth, to help working people balance work and family. The 180 labor laws and related regulations that the Department of Labor (DOL) administers advance these goals.

These laws and regulations cover a wide variety of workplace activities for nearly 10 million employers and well over 100 million workers. Most business men and women want to do the right thing. Few question the basic goals federal rules are meant to advance. But even for the best intentioned small business, it may be difficult to be familiar with the full range of relevant labor laws and regulations. This single publication represents another step toward making it less burdensome for small businesses to meet their regulatory obligations, so they can spend more of their time doing what they do best -- creating good jobs for American workers.

The Handbook is designed to provide general information on the laws and regulations that the Department enforces. My hope is that by providing clear and concise descriptions of the Departmental statutes most commonly applicable to small businesses, and by explaining how to obtain assistance from the Department in complying with them, small businesses and their workers will all be helped.

Alexis M. Herman

Secretary of Labor

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SMALL BUSINESS HANDBOOK:

Laws, Regulations and Technical Assistance Services

Overview

DISCLAIMER Updated: November 1997

Major Statutes and Regulations Administered by the Department of Labor

The main body of this Handbook consists of 28 discrete chapters describing the requirements of each of the major statutes enforced by the Department of Labor (DOL). The 28 chapters are organized by type of standard (i.e., Retirement and Health Benefit Standards; Safety and Health Standards; Wage, Hour and Other Workplace Standards; and Workplace Standards for Federally Funded or Assisted Contracts). Each chapter discusses: which employers or employees are covered by the statute; the statute's basic provisions and requirements; how to obtain information and assistance from DOL; penalties for non-compliance; and relation to state, local and other federal laws. Links are provided in each chapter to more detailed information available on DOL agencies' websites, such as the text of statutes, regulations (e.g., the Code of Federal Regulations), and interpretative bulletins. Users should refer to the regulations and other applicable materials to understand fully their responsibilities under each statute.

Please note that other federal agencies besides DOL enforce laws and regulations that affect employers. For example, statutes designed to ensure non-discrimination in employment are generally enforced by the **Equal Employment Opportunity Commission**. Also, the Taft-Hartley Act regulating employer conduct with regard to employees in a wide range of areas is administered by the **National Labor Relations Board**. Please consult these agencies for further information on their requirements.

The Overview is organized differently than the main body of the Handbook in an effort to help new businesses ascertain which of DOL's statutes are most likely to apply to them. Thus, the first statutes discussed in the Overview apply to most employers, followed by those that apply to federal contractors, and finally by the statutes that apply to specific industries (i.e., agriculture, mining, construction, and transportation). Links are made within the Overview to the related, more detailed chapters in the Handbook so that employers may readily obtain additional information on the basic requirements of the statutes. In a few instances, statutes are discussed for which there are no corresponding chapters in the Handbook. In these cases, the user is directed to the appropriate DOL agency for additional information.

I. Requirements Applicable to Most Employers

A. Employee Benefit Plans

The **Employee Retirement Income Security Act (ERISA)**, which governs certain activities of most employers who have pension or welfare benefit plans, preempts many state laws in this area. ERISA is administered by DOL's Pension and Welfare Benefits Administration (PWBA). The statute also provides an insurance mechanism to protect retirement benefits

through a requirement that employers pay annual pension benefit insurance premiums to the **Pension Benefits Guaranty Corporation (PBGC)**, which is associated with the Department of Labor. Pension insurance information can be obtained by writing PBGC, Processing and Technical Assistance Branch, 1200 K Street, NW, Washington, DC 20006, or by calling (202) 326-4000.

ERISA covered **pension plans** must meet a wide range of fiduciary and reporting and disclosure requirements. PWBA's regulations define such concepts as what constitutes plan assets, what is adequate consideration for the sale of plan assets, and the effects of participants having control over the assets in their plans, among other things.

Under ERISA, **welfare benefit plans** also must meet a wide range of fiduciary, reporting, and disclosure requirements. There are also disclosure and notification requirements for the continuation of health care provisions that were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). These provisions cover group health plans of employers with 20 or more employees on a typical business day in the previous calendar year. COBRA gives separated participants and beneficiaries an election to maintain, at their own expense, coverage under the employer's health plan for a limited period of time.

The **Health Insurance Portability Act of 1996** added several provisions to ERISA which are designed to provide participants and beneficiaries of group health plans with improved portability and renewability of coverage, as well as improved access to insurance and protection against discrimination on the basis of health status.

B. Safety and Health Requirements

The **Occupational Safety and Health Act (OSH Act)** , which is administered by DOL's Occupational Safety and Health Administration (OSHA), regulates safety and health conditions in most private industry workplaces (except those regulated under other federal statutes, e.g., the transportation industry). Many private employers are regulated through states operating under OSHA-approved plans.

It is the responsibility of employers to become familiar with job safety and health standards applicable to their establishments, to comply with the standards, and to eliminate hazardous conditions to the extent possible. Compliance may include ensuring that employees have and use personal protective equipment when required for their safety or health. Employees must comply with all rules and regulations that are applicable to their own actions and practices.

Employers covered by the OSH Act are required to maintain workplaces that are safe and healthful. In doing so, they must meet certain regulatory requirements. Through regulations, OSHA promulgates safety and health standards, and frequently makes distinctions by type of industry.

- Safety standards include regulations covering hazards such as falls, explosions, electricity, fires, and cave-ins, as well as machine and vehicle operation and maintenance, etc.
- Health standards regulate exposure to a variety of health hazards through engineering controls, the use of personal protective equipment (e.g., respirators or hearing

protection), and work practices.

Where OSHA has not promulgated a specific standard, employers are responsible for complying with the OSH Act's "general duty" clause [Section 5(a)(1)], which states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

When OSHA develops specific safety and health standards, the more general safety and health regulations originally issued under the following laws administered by the Department of Labor are superseded: the Walsh-Healey Act, the Service Contract Act, the Contract Work Hours and Safety Standards Act, and the Arts and Humanities Act.

Another generally applicable statute, the **Fair Labor Standards Act (FLSA)** prescribes the conditions under which minors (those under age 18) can safely work. These restrictions affect most private and public employment. This Act is administered by the Wage and Hour Division of DOL's Employment Standards Administration (ESA). **Child labor** provisions of the FLSA (non-agriculture) include restrictions on the hours of work and occupations for youths under age 16, and set forth 17 hazardous occupations orders for jobs declared by the Secretary of Labor to be too dangerous for minors under age 18 to perform.

C. Wage, Hour and Other Workplace Standards

The **Fair Labor Standards Act (FLSA)** prescribes minimum wage and overtime pay standards as well as recordkeeping and child labor standards for most private and public employment, including work conducted in the home (homework). This Act is administered by the Wage and Hour Division of DOL's Employment Standards Administration (ESA).

The minimum wage and overtime pay provisions of the FLSA require the following from employers of covered employees who are not otherwise exempt:

- As of September 1, 1997, employers must pay covered employees a minimum wage of not less than $5.15 an hour. Employers may pay employees on a piece-rate basis and, under some circumstances, may consider the tips of employees as part of their wages.
- Youths under 20 years of age may be paid a minimum wage of not less than $4.25 an hour during the first 90 consecutive calendar days of employment. with an employer. Employers may not displace any employee to hire someone at the youth minimum wage.
- Although the Act does not place a limit on the total hours which may be worked by an employee who is at least 16 years old, it does require that covered employees, unless otherwise exempt, be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek.

In addition, the FLSA generally prohibits the performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor. As noted above, child labor provisions (non-agriculture) of the FLSA include restrictions on the hours of work and occupations for youths under age 16.

Other generally applicable statutes which set workplace standards include:

- Under the **Immigration and Nationality Act (INA)**, foreign workers are allowed to work in the United States. The Employment Standards Administration's Wage and Hour Division has enforcement authority pertaining to the employment of nonimmigrant workers in four visa classifications: **D-1 (crewmembers)**; **H-1A (registered nurses)**; **H- 1B (workers employed in a "specialty occupation" or as a fashion model)**; and H-2A (workers employed in temporary agricultural jobs). Additionally, under the **INA**, employers must verify the identity and employment authorization of all employees, including foreign workers.

- The **Family and Medical Leave Act** requires employers of 50 or more employees (and all public agencies) to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth and care of a child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or a family member. This Act is administered by the Wage and Hour Division of ESA.

- Veteran's reemployment rights ensure that those who serve in the armed forces have a right to reemployment with the employer they were with when they went in service, including those called up from the reserves or National Guard. The **Uniformed Services Employment and Reemployment Act**, which provides these rights, is administered by DOL's Office of the Assistant Secretary for Veterans' Employment and Training.

- Plant closings and layoffs may cause employers to become subject to the **Worker Adjustment and Retraining Notification Act (WARN)** which provides for early warning to employees of proposed layoffs or plant closings. The Employment and Training Administration can provide information on WARN, but since it does not have administrative or enforcement authority under WARN, it cannot provide specific advice or guidance with respect to individual situations.

- The **Employee Polygraph Protection Act (EPPA)** prohibits most use of lie detectors by employers on their employees. This Act is administered by the Wage and Hour Division of ESA.

- Garnishment of wages by employers is subject to regulation under the **Consumer Credit Protection Act**. This Act is administered by the Wage and Hour Division of ESA.

- The **Labor-Management Reporting and Disclosure Act (LMRDA)** (also known as the Landrum-Griffin Act) deals with the relationship between a union and its members. It ensures certain basic standards of democracy and fiscal responsibility in labor organizations. This Act is administered by DOL's Employment Standards Administration, Office of Labor-Management Standards (OLMS).

II. Requirements Applicable to Employers Because of the Receipt of Government Contracts, Grants or Financial Assistance

Non-discrimination and affirmative action requirements for Federal contractors are set under **Executive Order 11246**, **Section 503 of the Rehabilitation Act**, and the **Vietnam Era**

Veteran's Readjustment Assistance Act (38 U.S.C. 4212). These programs prohibit discrimination and require affirmative action with regard to race, sex, ethnicity, religion, disability and veterans' status. ESA's Office of Federal Contract Compliance Programs (OFCCP) administers these programs.

Wage, hour, and fringe benefit standards are determined for employees of federal contractors under: the **Davis-Bacon and Related Acts** (for construction); the **Contract Work Hours and Safety Standards Act**; the **McNamara-O'Hara Service Contract Act** (for services); and the **Walsh-Healey Public Contracts Act** (for manufacturing). The Wage and Hour Division of ESA both makes the determination of the required wage and benefit rates and enforces the requirements under the various statutes. Safety and health standards are also issued under these Acts and are applicable to covered contractors, unless they have been superseded by specific standards issued by the Occupational Safety and Health Administration. *Contact your local **OSHA Office** for more detail on safety standards.*

III. Industry-Specific Requirements

A. Agriculture

Several safety and health standards issued and enforced by OSHA and the **Environmental Protection Agency** (e.g., pesticides) apply to this industry. In addition, several agriculture-specific programs are administered by the Employment and Training Administration and the Employment and Standards Administration's Wage and Hour Division.

Under the authority of the **Occupational Safety and Health Act** , OSHA has issued a number of safety standards that relate directly to the agricultural industry, including: field sanitation, overhead protection for operators of agricultural tractors, grain handling facilities, and guarding of farm field equipment and cotton gins. *Contact your local **OSHA Office** for more detail.*

The Immigration and Nationality Act (INA) requires that employers wishing to use nonimmigrant workers for temporary agricultural employment under the H-2A visa classification apply to the Employment and Training Administration for a labor certificate showing that there are not sufficient workers in the U.S. able, willing, qualified and available to do the work, and that employment of such nonimmigrant workers will not adversely affect the wages and working conditions of workers in the U.S.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that covered farm labor contractors, agricultural employers and agricultural associations comply with worker protection provisions applicable to migrant and seasonal agricultural workers who they recruit, solicit, hire, employ, furnish or transport or, in the case of migrant agricultural workers, to whom they provide housing. The Wage and Hour Division administers the requirements of MSPA. *Contact your local ESA **Wage and Hour Division** Office for more detail.*

The **Fair Labor Standards Act (FLSA)** contains special child labor regulations applicable to agricultural employment. The regulations administered and enforced by the Wage and Hour Division apply only to those establishments with employees (e.g., they do not apply to family-run and family-operated farms that do not hire outside workers). *Contact your local ESA **Wage and Hour Division** Office for more details.*

B. Mining

The goal of the **Federal Mine Safety and Health Act of 1977** is to improve working conditions in the nation's mines. This law strengthened an earlier coal mining law and brought metal and nonmetal miners under the same general protections as those afforded coal miners. Its provisions cover all miners and other persons employed to work on mine property. The Act is administered by the Labor Department's Mine Safety and Health Administration (MSHA).

Under the Act, the operators of mines, with the assistance of their employees, have the primary responsibility for ensuring the health and safety of the miners. MSHA is responsible for fully inspecting every underground mine at least four times a year and every surface mine at least twice a year to ensure that these responsibilities are met. MSHA also conducts training and provides technical assistance to the mining industry in the continuting effort to reduce deaths, serious injuries, and illnesses.

The Act established mandatory miners' training requirements and strengthened health protection measures and gassy mine safety programs. It also included tougher civil monetary penalties for safety or health violations by mine operators. In addition, the Act provided for closure of mines in cases of imminent danger to workers or failure to correct violations within the time allowed, and it called for greater involvement of miners and their representatives in processes affecting workers' health.

Each mine must be registered with MSHA. Many mine operators are required to submit plans to MSHA for approval before beginning operations. Such plans must be followed during mining. Required plans for underground coal mines cover operational aspects such as ventilation and roof control. Training plans are required for both underground and surface mines. Mine operators are also required to report each individual mine accident or injury to MSHA.

MSHA's Coal Mine Safety and Health Division enforces the law and the relevant regulations at more than 4,600 underground and surface coal mines. MSHA's Metal and Nonmetal Mine Safety and Health Division enforces federal requirements at more than 11,000 non-coal mines (including open pit mines, stone quarries, and sand and gravel operations).

Health and safety regulations developed and enforced by MSHA cover numerous hazards, including those associated with the following:

- exposure to respirable dust, airborne contaminants and noise;
- design, operation and maintenance requirements for mechanical equipment, including mobile equipment;
- roof falls, and rib and face rolls;
- flammable, explosive and noxious gases, dust and smoke;
- electrical circuits and equipment;
- fires;
- storage, transportation, and use of explosives;
- hoisting; and
- access and egress.

The **Black Lung Benefits Act (BLBA)** , part of the Federal Mine Safety and Health Act of 1977, provides for monthly payments and medical treatment to coal miners totally disabled from pneumoconiosis (black lung). The Act also provides for payments to certain family members of miners who died from, or are totally disabled because of pneumoconiosis. The Act is administered by ESA's Office of Workers' Compensation Programs, Division of Coal Mine Workers' Compensation.

C. Construction

Several DOL agencies are involved in administering programs related to the construction industry:

- Under the **Occupational Safety and Health Act**, OSHA sets and enforces occupational safety and health standards specific to the construction industry.
- The **Davis-Bacon Act and related Acts** require most contractors and subcontractors on federally assisted construction contracts in excess of $2,000 to pay prevailing wage rates and fringe benefits as determined by the Secretary of Labor through the Wage and Hour Division of the Employment Standards Administration (ESA).
- Under **E.O. 11246**, ESA's Office of Federal Contract Compliance Programs has issued specific regulations on non-discrimination and affirmative action requirements for federal construction contractors and subcontractors.
- The "Anti-Kickback" section of the **Copeland Act** applies to all contractors and subcontractors performing on any federally funded or assisted contract for the construction or repair of any public building or public work -- except contracts for which the only federal assistance is a loan guarantee. This provision precludes a contractor or subcontractor from inducing an employee -- in any manner-- to give up any part of his/her compensation to which he/she is entitled.

D. Transportation

Many laws with labor provisions affecting the transportation industry are administered by agencies outside of the Department. For example, the Railway Labor Act is administered primarily by the **Department of Transportation** and the Railway Retirement Board. Special DOL programs for this industry include longshoring and maritime industry standards issued and enforced by OSHA under the **Occupational Safety and Health Act**.

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Wage, Hour and Other Workplace Standards

Minimum Wage and Overtime Pay

DISCLAIMER

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Fair Labor Standards Act of 1938, as Amended

(29 USC §201 et seq.; 29 CFR 510-794)

Who is Covered

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record-keeping and child labor standards that affect over 100 million full- and part-time workers in the private sector and in federal, state and local governments.

The Act applies to enterprises that have employees who are engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on goods or materials that have been moved in or produced for interstate commerce. For most firms, an annual dollar volume of business test of $500,000 applies (i.e., those enterprises under this dollar amount are not covered). The following are covered by the Act regardless of their dollar volume of business: hospitals, institutions primarily engaged in the care of the sick, aged, mentally ill or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools and institutions of higher education; and federal, state and local government agencies.

Employees of firms that do not meet the $500,000 annual dollar volume test may be individually covered in any workweek in which they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity which is closely related and directly essential to the production of such goods. Domestic service workers, such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters, are also covered if they receive at least $1,000 (1995) in cash wages from one employer in a calendar year, or if they work a total of more than 8 hours a week for one or more employers.

An enterprise that was covered by the Act on March 31, 1990, and that ceased to be covered because of the increase in the annual dollar volume test to $500,000, as required under the 1989 amendments to the Act, continues to be subject to the overtime pay, child labor and recordkeeping requirements of the Act.

Some employees are exempt from the Act's overtime pay provisions or both the minimum wage and overtime pay provisions under specific exemptions provided in the law. Because these exemptions are generally narrowly defined, employers should carefully check the exact terms and conditions for each by contacting local offices of the **Wage and Hour Division** listed in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division.

The following are examples of employees exempt from both the minimum wage and overtime pay requirements:

- **Executive, administrative and professional employees** (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals (as defined in Department of Labor regulations);
- Employees of certain seasonal amusement or recreational establishments;
- Employees of certain small newspapers and switchboard operators of small telephone companies;
- Seamen employed on foreign vessels;
- Employees engaged in fishing operations;
- Employees engaged in newspaper delivery;
- Farm workers employed on small farms (i.e., those that used less than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year);
- Casual babysitters and persons employed as companions to the elderly or infirm.

The following are examples of employees exempt from the Act's overtime pay requirements only:

- Certain commissioned employees of retail or service establishments;
- Auto, truck, trailer, farm implement, boat or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks or farm implements, who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- Railroad and air carrier employees, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
- Announcers, news editors and chief engineers of certain non-metropolitan broadcasting stations;
- Domestic service workers who reside in their employer's residence;
- Employees of motion picture theaters;
- Farmworkers.

Certain employees may be partially exempt from the Act's overtime pay requirements. These include:

- Employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors;
- Employees of hospitals and residential care establishments which have agreements with the employees to work a 14-day work period in lieu of a 7-day workweek (if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over 8 in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours);
- Employees who lack a high school diploma or who have not completed the eighth grade may be required by their employer to spend up to 10 hours in a workweek in remedial reading or training in other basic skills that are not job-specific, as long as they are paid their normal wages for the hours spent in such training. Such employees need not be

paid overtime premium pay for their remedial training hours.

Basic Provisions/Requirements

The Act requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage of not less than $5.15 an hour beginning September 1, 1997. Youths under 20 years of age may be paid a minimum wage of not less than $4.25 an hour during the first 90 consecutive calendar days of employment with an employer. Employers may not displace any employee to hire someone at the youth minimum wage. Employers may pay employees on a piece-rate basis, as long as they receive at least the equivalent of the required minimum hourly wage rate. Employers of tipped employees, i.e., employees who customarily and regularly receive more than $30 a month in tips, may consider the tips of these employees as part of their wages, but must pay a direct wage of at least $2.13 per hour if they claim a tip credit. Certain other conditions must also be met.

The Act also permits the employment of certain individuals at wage rates below the statutory minimum wage under certificates issued by the Department:

- Student learners (vocational education students);
- Full-time students in retail or service establishments, agriculture, or institutions of higher education;
- Individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed.

The Act does not limit the number of hours in a day or days in a week an employee (at least 16 years old) may be required or scheduled to work, including overtime hours. The Act requires that covered employees, unless otherwise exempt, be paid not less than **one and one-half times their regular rates of pay** for all hours worked in excess of 40 in a workweek.

Employers are required to keep **records** on wages, hours and other items as set out in the Department of Labor's regulations. Most of this information is of the type generally maintained by employers in ordinary business practice.

Performance of certain types of **work in an employee's home** is prohibited under the Act unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). Employers wishing to employ homeworkers in these industries are required to, among other things, provide written assurances to the Department that they will comply with the Act's wage and other requirements. The manufacture of women's apparel (and jewelry under hazardous conditions) is generally prohibited, except under special certificates that allow homework in these industries when the homeworker is unable to adjust to factory work because of age or physical or mental disability, or is caring for an invalid in the home.

Special provisions apply to **state and local government employment**.

It is a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act. The Act also prohibits the shipment of goods in interstate commerce which were produced in violation of the

minimum wage, overtime pay, child labor, or special minimum wage provisions.

Assistance Available

More detailed information on the FLSA, including copies of **explanatory brochures** and regulatory and interpretative materials, may be obtained by contacting local **Wage-Hour offices** listed in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division.

Penalties

Enforcement of the Act is carried out by Wage and Hour Division investigators stationed throughout the country. A variety of remedies is available to the Department to enforce compliance with the Act's requirements. When investigators encounter violations, they recommend changes in employment practices in order to bring the employer into compliance and request the payment of any back wages due employees. Willful violations may be prosecuted criminally and the violators fined up to $10,000. A second conviction may result in imprisonment. Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to **civil money penalties** of up to $1,000 per violation. When a civil money penalty is assessed, employers have the right, within 15 days of receipt of the notice of such penalty, to file an exception to the determination. When an exception is filed, it is referred to an administrative law judge for a hearing and determination as to the appropriateness of the penalty. If an exception is not filed, the penalty becomes final.

The Secretary of Labor may also bring suit for back pay and an equal amount in liquidated damages and obtain injunctions to restrain persons from violating the Act. Employees may also bring suit, where the Department has not done so, for back pay and liquidated damages, as well as attorney's fees and court costs.

Relation to State, Local and Other Federal Laws

State laws also apply to employment subject to this Act. When both this Act and a state law apply, the law setting the higher standards must be observed.

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U.S. Department of Labor

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Wage, Hour and Other Workplace Standards

Employment Eligibility of Workers

DISCLAIMER

Updated: November 1997

Immigration Reform and Control Act of 1986 (IRCA)

(8 USC §1101), as amended

The Immigration and Nationality Act, Section 274A

Who is Covered

The Immigration and Nationality Act (INA) employment eligibility verification and related nondiscrimination provisions apply to all employers.

Basic Provisions/Requirements

Under IRCA, employers may hire only persons who may legally work in the United States (U.S.): citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired which includes completing and retaining the Employment Eligibility Verification Form (I-9). Employers must keep I-9s on file for at least 3 years (or one year after employment ends, whichever is greater).

The INA also protects U.S. citizens, and aliens authorized to accept employment in the U.S., from discrimination in hiring or discharge on the basis of national origin and citizenship status.

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the Employment Standards Administration's **Wage and Hour Division** and **Office of Federal Contract Compliance** local offices.

Penalties

Employers who fail to complete and/or retain the I-9 forms are subject to penalties. Enforcement of the INA requirements on employment eligibility verification comes under the jurisdiction of the **Immigration and Naturalization Service (INS)**. The **Justice Department** is responsible for enforcing the anti-discrimination provisions. In conjunction with their ongoing enforcement efforts, the Employment Standards Administration's Wage and Hour Division and Office of Federal Contract Compliance Programs conduct inspections of the I-9 forms. Their findings are reported to the INS and to the Department of Justice where there is apparent disparate treatment or apparent unauthorized workers employed.

Relation to State, Local and Other Federal Laws

Not applicable.

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Wage, Hour and Other Workplace Standards

Whistleblower Protection

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Employee Protection (Whistleblower) Provisions -- Clean Air Act
(42 USC §7622)
Comprehensive Environmental Response, Compensation and Liability Act
(42 USC §9610)
Energy Reorganization Act of 1974
(42 USC §5851 as amended by Section 2902, P.L. 102-486 (106 Stat. 2776))
Safe Drinking Water Act
(42 USC §300j-9(I))
Solid Waste Disposal Act
(42 USC §6971)
Toxic Substance Control Act
(15 USC §2622)
Federal Water Pollution Control Act
(33 USC §1367); 29 CFR 24

Who is Covered

These environmental Acts provide protection from discharge or other discriminatory actions by employers in retaliation for employees' good faith complaints about safety and health hazards in the workplace and the environment.

Basic Provisions/Requirements

The employee protection provisions of these Acts prohibit employers from discharging or otherwise discriminating against employees in retaliation for their disclosure to the employer or to the appropriate federal agency of safety and health hazards. They also protect employee participation in formal government proceedings in connection with safety and health hazards. The Acts specifically exclude from protection the disclosure of hazards deliberately caused by an employee. Additionally, the statutes do not protect "frivolous" complaints. Employees have the right under the Acts to refuse to work in hazardous or unsafe situations.

Employees who believe they have been discriminated against in violation of these protective provisions may file a complaint, within 30 days of the alleged violation, with the **Occupational Safety and Health Administration (OSHA)**.

Assistance Available

More detailed information, including copies of regulatory and interpretative materials, may be

obtained by contacting your nearest **OSHA offices** .

Penalties

Upon receipt of a complaint, the Occupational Safety and Health Administration conducts an investigation to determine whether a violation has occurred. When a violation has occurred, the employer is notified of the violation determination and efforts are made to conciliate the situation. The employer may appeal a violation determination to an administrative law judge, if done within 5 calendar days of the notification of the determination. The administrative law judge's decision is referred to the Secretary of Labor for a final order. The Secretary may affirm or set aside the administrative law judge's decision. Where the Secretary concludes that a violation has occurred, his or her final order may instruct the employer to take affirmative action to abate the violation and provide for appropriate relief, which may include restoration of back pay, employment status and benefits. The Secretary may also order the employer to provide compensatory damages to the employee. If dissatisfied with the Secretary's decision, the employer may appeal in federal court. Final determinations on violations are enforceable through the courts. The employee is entitled to similar appeal rights under the Acts.

Relation to State, Local and Other Federal Laws

The whistleblower programs do not preempt existing state statutes and common law claims. All provisions contained in the programs are in addition to protection provided by state laws.

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Wage, Hour and Other Workplace Standards

Family and Medical Leave

DISCLAIMER

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Family and Medical Leave Act of 1993

(29 USC §2601 et seq; 29 CFR 825)

Who is Covered

The Family and Medical Leave Act (FMLA) is intended to provide a means for employees to balance their work and family responsibilities by taking unpaid leave for certain reasons. The Act is intended to promote both the stability and economic security of families, and the national interests in preserving family integrity.

The FMLA is applicable to any employer in the private sector who is engaged in commerce or in any industry or activity affecting commerce, and who has 50 or more employees each working day during at least 20 calendar weeks or more in the current or preceding calendar year.

All public agencies (state and local government) and local education agencies (schools) are covered. These employers do not need to meet the 50 employee test. Most federal employees are covered by Title II of FMLA and are subject to regulations issued by the **Office of Personnel Management**.

In order to be "eligible" for FMLA leave, an employee must be employed by a covered employer and work at a worksite within 75 miles of which that employer employs at least 50 employees; must have worked at least 12 months (which do not have to be consecutive) for the employer; and, must have worked at least 1,250 hours during the 12 months immediately preceding the date of commencement of FMLA leave.

Basic Provisions/Requirements

The FMLA provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12 months for the following reasons:

- Birth and care of the employee's child or placement for adoption or foster care of a child with the employee;
- To care for an immediate family member (spouse, child, parent) who has a serious health condition; or
- For the employee's own serious health condition.

An employer must maintain group health benefits that an employee was receiving at the time leave began during periods of FMLA leave at the same level and in the same manner as if the employee had continued to work. Under most circumstances, an employee may elect or the

employer may require the use of any accrued paid leave (vacation, sick, personal, etc.) for periods of unpaid FMLA leave. FMLA leave may be taken in blocks of time less than the full 12 weeks on an intermittent or reduced leave basis. Taking intermittent leave for the placement for adoption, or foster care of a child is subject to approval by the employer. Intermittent leave taken for the birth and care of a child is also subject to the employer's approval except for leave relating to the pregnancy which would be leave for a serious health condition.

When leave is foreseeable, an employee must provide the employer with at least 30 days notice of the need for leave or as much notice as is practicable. If the leave is not foreseeable, then notice must be given as soon as practicable. An employer may require medical certification of a serious health condition from the employee's health care provider, and may require periodic reports during the period of leave of the employee's status and intent to return to work, as well as "fitness-for-duty" certification upon return to work in appropriate situations.

When the employee returns from FMLA leave, the employee is entitled to be restored to the same or an equivalent job. An equivalent job is one with equivalent pay, benefits, responsibilities, etc. The employee is not entitled to accrue benefits during periods of unpaid FMLA leave, but must be returned to employment with the same benefits at the same levels as existed when leave commenced.

Employers are required to **post a notice** for employees that outlines the basic provisions of FMLA and are subject to a civil money penalty for willfully failing to post such notice. Employers are prohibited from discriminating against or interfering with employees who take FMLA leave.

Assistance Available

FMLA is administered by the Employment Standards Administration's **Wage and Hour Division.** More detailed information, including copies of **explanatory brochures**, may be obtained by contacting the local **Wage and Hour offices**. In addition, Wage and Hour has developed the **Family and Medical leave Act Advisor**(**http://www.dol.gov/elaws/**), which is an Internet online system that answers a variety of commonly asked questions about FMLA including employee eligibility, valid reasons for leave, employee/employer notification responsibilities, and employee rights/benefits.

Penalties

Employees or any person may file complaints with the Employment Standards Administration, U.S. Department of Labor (usually through the nearest office of the Wage and Hour Division). The Secretary may file suit to insure compliance and recover damages if a complaint cannot be resolved administratively. Employees also have private rights of action without involvement of the Department to correct violations and recover damages through the courts.

Relation to State, Local and Other Federal Laws

A number of States have family leave statutes. Nothing in the FMLA supersedes a provision of State law that is more beneficial to the employee, and employers must comply with the more beneficial provision. Under some circumstances, an employee with a disability may also have rights under the Americans with Disabilities Act (enforced by the **U.S. Equal Employment Opportunity Commission**).

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Uniformed Services Employment and Reemployment Rights

DISCLAIMER

Updated: November 1997

Uniformed Services Employment and Reemployment Rights Act (USERRA)
(USERRA replaces the Veterans' Reemployment Rights (VRR) statute
(P.L. 103-353, 108 Stat. 3149; 38 USC §43)

Who is Covered

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was signed by the President on October 13,1994. The Act applies to persons who perform duty, voluntarily or involuntarily, in the "uniformed services." These services include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service commissioned corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA. Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), and initial active duty training, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty. USERRA covers all employees except those serving in positions where there is "no reasonable expectation that employment will continue indefinitely or for a significant period."

Basic Provisions/Requirements

Service members returning from a period of service in the uniformed services must meet five eligibility criteria to be covered by USERRA:

- The person must have held a civilian job;
- The person must have given notice to the employer that he or she was leaving the job for service in the uniformed services;
- The period of service must not have exceeded five years;
- The person must have been released from service under honorable conditions; and
- The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

USERRA establishes a 5-year cumulative total on military service with a single employer, with certain exceptions allowed for call-ups during emergencies, for reserve drills and annually scheduled active duty for training, etc. USERRA also allows an employee to complete an initial period of active duty that exceeds 5 years, e.g., enlistees in the Navy's nuclear power program who are required to serve 6 years.

Under USERRA, restoration rights are based on the duration of military service rather than the type of military duty performed, e.g., active duty for training, inactive duty, etc.

Time limits for returning to work under USERRA, with the exception of fitness- for-service examinations, depend upon the duration of a person's military service. The applicable time limits are as follows:

- Less than 31 days service: By the beginning of the first regularly scheduled work period after the end of the calendar day of duty plus time required to return home safely. If this is impossible or unreasonable, then as soon as possible.
- 31 to 180 days: Application for reemployment must be submitted no later than 14 days after completion of a person's service. If this is impossible or unreasonable through no fault of the person, then as soon as possible.
- 181 days or more: Application for reemployment must be submitted no later than 90 days after completion of a person's military service.
- Service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

USERRA guarantees reemployed persons pension plan benefits that accrued during military service, regardless of whether the plan is a defined benefit plan or a defined contribution plan.

USERRA provides health benefits continuation for service members and their families during military service for up to 18 months.

USERRA is enforced by DOL's **Veterans' Employment and Training Service (VETS)**.

Assistance Available

VETS has published a fact sheet (OASVET 95-3) covering USERRA. Copies of this and/or other VETS' publications, or answers to questions on USERRA, may be obtained from the **local VETS office**. Information regarding USERRA may also be obtained by dialing 1-800-442-2VET.

Penalties

USERRA allows for liquidated damages for "willful" violations.

Relation to State, Local and Other Federal Laws

USERRA does not preempt state laws providing greater or additional rights, but it does preempt state laws providing lesser rights or imposing additional eligibility criteria.

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Plant Closings and Mass Layoffs

DISCLAIMER

Updated: November 1997

Worker Adjustment and Retraining Notification Act (WARN)

29 USC §2101 et seq.; 20 CFR 639

Who is Covered

In general, employers are covered by Worker Adjustment and Retraining Notification Act (WARN or the Act) if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months and not counting employees who work an average of less than 20 hours a week. Regular federal, state and local government entities which provide public services are not covered. Employees entitled to notice under WARN include hourly and salaried workers, as well as managerial and supervisory employees.

Basic Provisions/Requirements

WARN provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. WARN also provides for notice to State dislocated worker units so that dislocated worker assistance can be promptly provided.

A covered **plant closing** occurs when a facility or operating unit is shut down for more than 6 months, or when 50 or more employees lose their jobs during any 30-day period at the single site of employment. A covered **mass layoff** occurs when a layoff of 6 months or longer affects 500 or more workers, or 33 percent or more of the employer's workforce when the layoffs affect between 50 and 499 workers. The number of affected workers is the total number laid off during a 30-day, or in some cases a 90-day period.

WARN does not apply to the closing of temporary facilities, or the completion of an activity when the workers were hired only for the duration of that activity. WARN also provides for less than 60 days notice when the layoffs were the result of the closing of a faltering company, unforeseeable business circumstances, or a natural disaster.

Assistance Available

The Department of Labor has published a pamphlet entitled "A Guide to Advance Notice of Closings and Layoffs," which describes the Worker Adjustment and Retraining Notification Act. Requests for copies of the pamphlet, or general questions on the regulations, may be addressed to:

U.S. Department of Labor
Employment and Training Administration
Office of Work-Based Learning
Room N-5426
200 Constitution Avenue, N.W. Washington, DC 20210
(202) 219-5577 (not a toll-free number)

Since the Department does not have administrative or enforcement authority under WARN, it cannot provide specific advice or guidance with respect to individual situations.

Penalties

An employer who violates the WARN provisions is liable to each employee for an amount equal to back pay and benefits for the period of the violation, up to 60 days. This may be reduced by the period of any notice that was given, and any voluntary payments made by the employer to the employee.

An employer who fails to provide the required notice to the unit of local government is subject to a civil penalty not to exceed $500 for each day of violation. This may be avoided if the employer satisfies the liability to each employee within 3 weeks after the closing or layoff.

Enforcement of WARN requirements is through the United States district courts. Workers, or their representatives, and units of local government may bring individual or class action suits. The Court may allow reasonable attorney's fees as part of any final judgement.

Relation to State, Local and Other Federal Laws

WARN is in addition to, and does not preempt any other federal, state or local law, or any employer/employee agreement which requires other notification or benefit.

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Unions

DISCLAIMER

Updated: November 1997

The Labor-Management Reporting and Disclosure Act of 1959, As Amended (LMRDA)

(Title 29, U.S.C., Sections 401 et seq.; 29 CFR 401 - 453)

Who is Covered

The **Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA)**, directly affects millions of people throughout the United States. The LMRDA covers unions; officers and employees of unions; union members; employees who work under collective bargaining agreements (even if they are not union members); employers; labor relations consultants; surety companies; trusts in which a union is interested; and other "persons" as defined in the LMRDA who may be covered by particular provisions of the Act. Unions which represent U.S. Postal Service employees are covered under the LMRDA by virtue of the Postal Reorganization Act of 1970. Section 7120 of the Civil Service Reform Act, and its implementing regulations, apply many LMRDA standards to unions which represent employees in most agencies of the executive branch of the Federal government. Unions composed solely of state and local government employees are not covered by the LMRDA.

Basic Provisions/Requirements

The LMRDA consists of seven titles. Title I is the "Bill of Rights" which sets forth certain basic rights which Congress believed should be guaranteed to union members by Federal law. These rights may be enforced by members through private suit in Federal district court. Section 104 of the LMRDA, which establishes the right to receive or examine collective bargaining agreements, applies not only to union members but also to all nonunion employees whose rights are directly affected by a collective bargaining agreement. The Secretary of Labor also has been given enforcement responsibilities with regard to section 104. These responsibilities are handled by the **Office of Labor-Management Standards (OLMS)** of the Department of Labor's **Employment Standards Administration**.

Title II requires unions to file an information report (Form LM-1) and copies of their constitution and bylaws with OLMS, as well as annual financial reports (Form LM- 2, LM-3, or LM-4). The **reports and documents filed with OLMS** are public information and any person may examine them or obtain copies at OLMS offices. Officers and employees of unions must file a Form LM-30 with OLMS if they have any loans or benefits from, or certain financial interests in, employers whose employees their union represents and businesses that deal with their union. Labor relations consultants who enter into an agreement with an employer to persuade employees about their union activities or to supply certain information to the employer must file a Form LM-20, Agreement and Activities Report and a Form LM-21, Receipts and Disbursements Report. Employers who enter into such an agreement or engage in certain

specified financial dealings with their employees, unions, union officers, or labor relations consultants must file a Form LM-10. Finally, surety companies which issue bonds required by the LMRDA or the **Employee Retirement Income Security Act of 1974 (ERISA)** must file a Form S-1 to report data such as premiums received, total claims paid, and amounts recovered. The Secretary of Labor has authority to enforce the reporting requirements of the Act.

Title III concerns the imposition of trusteeships over subordinate unions. A trusteeship may only be imposed for a purpose specified in the LMRDA and must be established and administered in accordance with the constitution and bylaws of the union which has imposed the trusteeship over the subordinate union. A parent union which places a subordinate union in trusteeship must file initial, semiannual, and terminal trusteeship reports (Forms LM-15, LM-15A, and LM-16). Under the LMRDA, the parent union which imposes the trusteeship may not engage in certain specified acts involving the funds and delegate votes from a trusteed union. The Secretary of Labor has the authority to investigate and enforce alleged violations of Title III and a union member or subordinate union may also enforce the provisions of this title, except for the reporting requirements, through private suit in Federal district court.

Title IV establishes standards for elections of union officers. Local unions must elect their officers by secret ballot; national and international unions and intermediate bodies must elect their officers either by secret ballot of the members or by delegates chosen by secret ballot. Title IV requires national and international unions to hold elections at least every five years, intermediate bodies at least every four years, and local unions at least every three years. Union and employer funds may not be used to promote the candidacy of any candidate, although union funds may be utilized for expenses necessary for the conduct of an election. A member in good standing in a union has the right to nominate candidates, be a candidate subject to reasonable qualifications uniformly imposed, hold office, and support and vote for the candidates of the member's choice. Unions must mail a notice of election to every member at the member's last-known home address at least 15 days prior to the election. A union member who has exhausted internal election remedies or invoked such remedies without obtaining a final decision within three calendar months may file a complaint with the Secretary within one calendar month thereafter alleging a violation of Title IV of the LMRDA. The Secretary of Labor has authority to file suit in a Federal district court to set aside an invalid union election and to request a new election under the supervision of the Secretary.

Title V provides a number of safeguards for unions. Union officers have a duty to manage the funds and property of the union solely for the benefit of the union in accordance with its constitution and bylaws. A union may not have outstanding loans to any one officer or employee that in total exceed $2,000. Union officials who handle union funds or property must be bonded to provide protection against losses. A union officer or employee who embezzles or otherwise misappropriates union funds or other assets commits a Federal crime punishable by a fine and/or imprisonment. Persons convicted of certain crimes, including a violation of Title II or III of the LMRDA, may not hold union office or employment for up to 13 years after conviction or the end of imprisonment.

Title VI contains miscellaneous provisions including the authority to investigate (see "Authority to Investigate and Penalties" section below); a prohibition on a union fining, suspending, expelling, or otherwise disciplining members for exercising their rights under the LMRDA; and a prohibition on the use or threat of force or violence to interfere with a union member in the

exercise of LMRDA rights.

Title VII amends the Labor Management Relations Act (LMRA), otherwise known as the Taft-Hartley Act, concerning strikes, boycotts, and picketing. The LMRA is administered by the **National Labor Relations Board (NLRB)**, an independent Federal agency.

Assistance Available

Additional compliance assistance **materials** are posted on the Internet. Staff is available at all **OLMS field offices** to answer questions about the LMRDA and to assist individuals and organizations affected by the law's provisions. The OLMS National Office Public Disclosure Room has copies of all reports and documents filed with OLMS and OLMS field offices have copies of reports filed by organizations and individuals located within their jurisdiction. In addition, all OLMS field offices as well as the **OLMS National Office** have blank reporting forms and instructions as well as explanatory pamphlets about the law.

Authority to Investigate and Penalties

The LMRDA authorizes the Secretary of Labor to investigate "in order to determine whether any person has violated or is about to violate" any provisions of the Act (except the Bill of Rights of Union Members and amendments made by the LMRDA to other laws), and to "enter such places and inspect such records and accounts and question such persons" as may be necessary to determine whether a violation has occurred. The Secretary may issue subpoenas to compel testimony or to obtain records and other material needed to complete an investigation.

The Secretary may file civil actions in Federal district court to restrain or correct violations and bring about compliance with the LMRDA. The embezzlement of union funds is subject to a fine of up to $250,000 and/or imprisonment up to five years. Criminal penalties also apply to other Title V provisions as well as certain reporting violations under Titles II and III.

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Lie Detector Tests

DISCLAIMER

Updated: November 1997

Employee Polygraph Protection Act of 1988
(29 USC §2001 et seq.; 29 CFR 801)

Who is Covered

The Employee Polygraph Protection Act (EPPA) applies to most private employers. Federal, state and local governments are not covered by the law.

Basic Provisions/Requirements

The EPPA prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment.

Employers are generally prohibited from requiring or requesting any employee or job applicant to take a lie detector test, and from discharging, disciplining, or discriminating against an employee or job applicant for refusing to take a test or for exercising other rights under the Act. Employers may not use or inquire about the results of a lie detector test or discharge or discriminate against an employee or job applicant on the basis of the results of a test, or for filing a complaint, or for participating in a proceeding under the Act.

Subject to restrictions, the Act permits polygraph (a type of lie detector) tests to be administered to certain job applicants of security service firms (armored car, alarm, and guard), and of pharmaceutical manufacturers, distributors and dispensers.

Subject to restrictions, the Act also permits polygraph testing of certain employees of private firms who are reasonably suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in specific economic loss or injury to the employer.

Where polygraph examinations are permitted, they are subject to strict standards concerning the conduct of the test, including the pretest, testing and post-testing phases. An examiner must also be licensed and bonded or have professional liability coverage. The Act strictly limits the disclosure of information obtained during a polygraph test.

Assistance Available

The Act is administered and enforced by the Employment Standards Administration's **Wage and Hour Division**. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the **local Wage and Hour offices**.

Penalties

The Secretary of Labor can bring court action to restrain violators and assess civil money penalties up to $10,000 per violation against violators. Employers who violate the law may be liable to the employee or prospective employee for legal and equitable relief, including employment, reinstatement, promotion and payment of lost wages and benefits. Any person against whom a civil money penalty is assessed may, within 30 days of the notice of assessment, request a hearing before an administrative law judge. If dissatisfied with the administrative law judge's decision, such person may request a review of the decision by the Secretary of Labor. Final determinations on violations are enforceable through the courts.

Relation to State, Local and Other Federal Laws

The law does not preempt any provision of any state or local law or any collective bargaining agreement which is more restrictive with respect to lie detector tests.

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Wage Garnishment

DISCLAIMER

Updated: November 1997

Title III, Consumer Credit Protection Act
(15 USC §1671 et seq; 29 CFR 870)

Who is Covered

Title III of the Consumer Credit Protection Act (CCPA) protects employees from being discharged by their employers because their wages have been garnished for any one debt and limits the amount of employees' earnings which may be garnished in any one week. Title III applies to all individuals who receive personal earnings and to their employers. Personal earnings include wages, salaries, commissions, bonuses and income from a pension or retirement program but does not ordinarily include tips.

Basic Provisions/Requirements

Wage garnishment is a legal procedure through which the earnings of an individual are required by court order to be withheld by an employer for the payment of a debt. Title III prohibits an employer from discharging an employee whose earnings have been subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect it. It does not, however, protect an employee from discharge if the employee's earnings have been subject to garnishment for a second or subsequent debts.

Title III also protects employees by limiting the amount of their earnings that may be garnished in any workweek or pay period to the lesser of 25 percent of disposable earnings or the amount by which disposable earnings are greater than 30 times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938. This limit applies regardless of the number of garnishment orders received by an employer. The current federal minimum wage is $5.15 per hour which became effective September 1, 1997.

In court orders for child support or alimony, Title III allows up to 50 percent of an employee's disposable earnings to be garnished if the employee is supporting a spouse or child, and up to 60 percent for an employee who is not. An additional 5 percent may be garnished for support payments which are more than 12 weeks in arrears. Such garnishments are not subject to the restrictions noted in the preceding paragraph.

"Disposable earnings" is the amount of employee earnings left after legally required deductions have been made for federal, state and local taxes, Social Security, unemployment insurance and state employee retirement systems. Other deductions which are not required by law, e.g., union dues, health and life insurance, and charitable contributions, are not subtracted from gross earnings when calculating the amount of disposable earnings for garnishment purposes.

Title III specifies that garnishment restrictions do not apply to bankruptcy court orders and debts due for federal and state taxes. Nor does it affect voluntary wage assignments, i.e., situations in which workers voluntarily agree that their employers may turn over some specified amount of their earnings to a creditor or creditors.

Assistance Available

Title III is administered and enforced by the Employment Standards Administration's **Wage and Hour Division**. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the local **Wage and Hour offices**.

Penalties

Violations of Title III may result in the reinstatement of a discharged employee, with back pay, and the restoration of improperly garnished amounts. Where violations cannot be resolved through informal means, court action may be initiated to restrain and remedy violations. Employers who willfully violate the discharge provisions of the law may be prosecuted criminally and fined up to $1,000, or imprisoned for not more than one year, or both.

Relation to State, Local and Other Federal Laws

If a state wage garnishment law differs from Title III, the law resulting in the smaller garnishment, or prohibiting the discharge of any employee because his or her earnings have been subject to garnishment for more than one debt, must be observed.

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Employment of Alien Nurses

DISCLAIMER

Updated: November 1997

The Immigration Nursing Relief Act of 1989 (INRA)

Amended by the Immigration and Nationality Act

(8 USC §1182(m); 20 CFR 655)

Who is Covered

The Immigration Nursing Relief Act (INRA) applies to health care facilities seeking to use nonimmigrant aliens as registered nurses under H-1A visas.

Basic Provisions/Requirements

INRA was enacted to provide relief for the shortage of registered nurses by legalizing current nonimmigrant registered nurses, to ensure employer's efforts were made to attract and develop more U.S. employees to the nursing profession, and to establish an attestation procedure for health care facilities to import and employ nonimmigrant nurses under the H-1A visa.

The attestation process requires that health care facilities attest to six elements before petitioning the **Immigration and Naturalization Service (INS)** for approval to import/employ the alien. These elements, among other things, require the employer to pay no less than the prevailing wage for registered nurses and to take steps to recruit, train, and retain U.S. nurses. The attestation process is administered by the **Employment and Training Administration (ETA)** while the Employment Standards Administration's **Wage and Hour Division** determines whether a health care facility misrepresented a material fact on its attestation, failed to perform an attested condition, or otherwise violated the program.

Assistance Available

More detailed information may be obtained by contacting the local **Employment and Training Administration** and **Wage and Hour Division** offices.

Penalties

When violations are found, the Administrator of the Wage and Hour Division of ESA may assess a civil money penalty not to exceed $1,000 for each person affected by the violation and impose other appropriate remedies, including payment of back wages and the performance of attested obligations. An employer may request a hearing on the determination of a violation before an administrative law judge, if done within 10 days of the date of the determination. Within 30 days of the decision by an administrative law judge, an interested party may request a review of the administrative law judge's decision by the Secretary of Labor. Employers found to have committed violations may also be precluded from access to

the H-1A nurse program for a period of at least one year.

Relation to State, Local, and other Federal Laws

Various other laws may be applicable to the employment of these workers such as workers compensation, tax (unemployment insurance, local, state, and Federal), and the Family and Medical Leave Act.

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Employment of Temporary Alien Agricultural Workers

DISCLAIMER

Updated: November 1997

Section 216 of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA)

(8 U.S.C. 1101, 1182, 1184, 1186 and 1288, 29 U.S.C. 49; 20 CFR §655, 29 CFR §501)

Who is Covered

The Immigration and Nationality Act (INA) applies to agricultural employers seeking to hire temporary, nonimmigrant foreign workers under H-2A visas.

Basic Provisions/Requirements

The INA requires that employers wishing to use nonimmigrant workers for temporary agricultural employment under the H-2A visa classification apply to the **Employment and Training Administration (ETA)** for a labor certificate showing that there are not sufficient workers in the U.S. able, willing, qualified and available to do the work, and that employment of such nonimmigrant workers will not adversely affect the wages and working conditions of workers in the U.S. Included within ETA's jurisdiction are such issues as whether U.S. workers were available, whether positive recruitment was conducted, whether there was a strike or lockout, the methodology for establishing adverse effect and prevailing wage rates, whether workers' compensation insurance will be provided, and other similar matters. The regulations pertaining to the issuance and denial of labor certification for temporary alien workers by ETA are found in title **20 CFR part 655**. The Employment Standards Administration's **Wage and Hour Division** is responsible for ensuring that employers' comply with terms and conditions of employment under the INA. These terms and conditions are outlined below. (See **29 CFR part 501** for complete details.)

Any employer who has been certified for a specific number of H-2A jobs must have initially attempted to recruit U.S. workers to fill these slots. Even after H-2A workers are recruited employers must continue to engage in "positive recruitment" of U.S. workers. In addition, after the H-2A workers have commenced work, the employer must agree to accept U.S. workers until 50 percent of the certified contract period has been completed.

Rates of Pay: In every H-2A employment situation the employer must agree to pay to all workers working in certified jobs a wage rate of the higher of either: (a) the Adverse Effect Wage Rate (AEWR); (b) the Prevailing Rate for a given crop/area; or the legal State minimum wage. None of these rates may be less than the Federal minimum wage -- $5.15 an hour. Wages may be calculated on the basis of hourly or "piece" rates of pay. However computed, they must not be less than the rate specified in the job offer/worker contracts.

Job Clearance Order/Worker Contracts: Every worker must be provided a copy of the worker contract or, as a substitute for the worker contract, a copy of the job clearance order. If worker contracts are provided, they must specify at least those benefits required by the regulations. The job clearance order is the "official" document since it is the one submitted by the employer and approved by the Department of Labor. The job clearance order/contracts must state:

- The beginning and ending dates of the contract period;
- Any and all significant conditions of employment -- such as payment for transportation expenses incurred, housing and meals to be provided (and related charges), specific days workers are not required to work (i.e., Sabbath, Federal holidays);
- The hours per day and the days per week each worker will be expected to work during the contract period;
- The crop(s) to be worked -- rate(s) for each crop/job;
- The rate(s) of pay for each job to be performed;
- Any tools required and that the employer pays for same; and
- That workers' compensation insurance will be provided per State law of the State where work is performed.

Guarantees to All Workers: Employers certified for H-2A must agree to provide each worker employed an offer of at least 75 percent of the hours in the contract period--called the "three-fourths guarantee." For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6-days a week, 8-hours per day, the worker would have to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360).

Wages for the guaranteed 75 percent period would be calculated at not less than the average hourly piece rate or the AEWR for the State in which the work was being done, whichever is higher.

Transportation Costs/Reimbursement: Every non-local worker employed on an H-2A contract is entitled to be paid for all transportation costs related to travel from the place where the worker was recruited to the site of the job, and then back to the worker's area of residence. This includes both foreign and U.S. workers. Workers are "non-local" if they cannot reasonably return to their permanent residence every night. Expenses must be reimbursed according to the following schedule:

- For transportation to the place of employment, the employer must repay the worker when 50 percent of the contract period has been completed;
- For transportation "home" the worker must complete the agreed upon contract period. The employer has no obligation to pay return expenses should a employee abandon the employment unless some special provision in the Worker's Contract otherwise provides.

Records Required: Employers certified under H-2A must keep records of the hours each worker actually works. In addition the employer must retain a record of time "offered" to the worker but which the worker "refused" to work. Each worker must be provided a wage statement showing hours of work, hours refused, pay for each type of crop, the basis of pay

(i.e., whether the worker is being paid by the hour, per piece, "task" pay, etc.). The wage statement must indicate total earnings for the pay period and all deductions from wages (along with an explanation as to why deductions were made).

Termination of Workers: Employers must maintain records concerning any worker who was terminated and the reason for such termination. The employer, in order to negate a continuing liability for wages and benefits to workers, must notify the local Job Service Office by providing a report on any termination(s), the date of the termination, giving the reason for each. The employer should also indicate if replacement(s) will be sought for such worker(s).

Assistance Available

Copies of Wage and Hour publications may be obtained by contacting the nearest office of the **Wage and Hour Division** listed in most telephone directories under U. S. Government, Department of Labor. Information about H-2A applications can be obtained from the nearest State employment service office or any Regional office of the **Employment and Training Administration**.

Penalties

Violation of H-2A requirements may result in the assessment of civil money penalties, an order to pay back-wages, an injunction against future violations, and prohibition from future participation in the H-2A program.

Relation to State, Local and Other Federal Laws

Foreign workers employed under the H-2A program are not covered under the Migrant and Seasonal Agricultural Worker Protection Act.

SMALL BUSINESS HANDBOOK

Wage, Hour and Other Workplace Standards

Employment of Foreign Workers in Specialty Occupations

DISCLAIMER

Updated: November 1997

The Immigration Act of 1990 (IMMACT), as amended The Immigration and Nationality Act

(8 USC §1101(a)(15)(I)(b), 1182(n), 1184(c); 20 CFR 655)

Who is Covered

The Immigration Act of 1990 applies to employers seeking to hire nonimmigrant aliens as workers in specialty occupations under H-1B visas.

Basic Provisions/Requirements

The Immigration and Nationality Act (INA) was amended to allow the lawful employment of foreign workers in certain specialty occupations (such as engineers, teachers, computer programmers, medical doctors, physical therapists, etc.) and as fashion models.

The INA established procedures for employers wishing to import and employ nonimmigrant workers. The employers must attest to four elements:

- To pay the higher of the actual wage paid to other workers similarly employed or the local area prevailing wage for the occupation;
- That the employment of H-1B workers will not adversely affect the working conditions of workers similarly employed in the area;
- That the employer will notify the Employment and Training Administration (ETA) of any future strike/lockout occurrences;
- That, on or within 30 days before the date the Labor Condition Application (LCA) is filed with ETA, the employer has provided notice of the employer's intent to hire H-1B workers. This notice must be provided to the bargaining representative of workers in the occupation in which the H- 1B nonimmigrant will be employed, or, if none, notices must be posted in conspicuous locations at the intended place(s) of employment. In addition, the employer must provide a copy of the LCA to each H-1B worker.

The attestation process is administered by the **Employment and Training Administration**. The **Wage and Hour Division** of the Employment Standards Administration (ESA) is responsible for investigating and resolving complaints that an employer has failed to meet the provisions of its attestation or has misrepresented a material fact therein.

Assistance Available

More detailed information may be obtained by contacting the local offices of **ETA** or ESA's

Wage and Hour Division.

Penalties

When violations are found, the Administrator of the Wage and Hour Division of ESA may assess a civil money penalty not to exceed $1000 per violation and impose other appropriate remedies, including payment of back wages. Any interested party may request a hearing on the Wage and Hour Administrator's determination before an administrative law judge, if done within 15 days of the date of the determination. Within 30 days of the decision by an administrative law judge an interested party may request a review of the administrative law judge's decision by the Secretary of Labor. Employers found to have committed certain violations may also be precluded from future access to the H-1B program and other immigrant programs for a period of at least one year.

Relation to State, Local and Other Federal Laws

Various other laws may be applicable to the employment of these workers such as worker's compensation, tax (unemployment insurance, local, State, and Federal) and the Family and Medical Leave Act.

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Employment of Alien Crewmembers

DISCLAIMER

Updated: November 1997

The Immigration Act of 1990 (IMMACT) and the Coast Guard Authorization Act of 1993, as amended, The Immigration and Nationality Act (INA)

(8 USC §1101 et seq.; 20 CFR 655)

Who is Covered

These provisions apply to employers seeking to hire nonimmigrant aliens as crewmembers in U.S. ports under D-1 visas.

Basic Provisions/Requirements

The INA was amended to prohibit alien crewmembers (D-visa holders) from performing longshore work in U.S. ports with 4 exceptions:

- if a reciprocity agreement is in place;
- if a port's collective bargaining agreement allows the employment of D-visa workers;
- if an attestation (form ETA9033-A) has been filed with the Department of Labor; and
- if longshore activity is performed with the use of an automated vessel.

The attestation process is administered by the **Employment and Training Administration**. The **Wage and Hour Division** of the Employment Standards Administration is responsible for investigating and resolving complaints that the employer failed to meet conditions attested to, misrepresented a material fact in an attestation, or failed to utilize the automated vessel exception properly.

Assistance Available

More detailed information may be obtained by contacting the local offices of the **Employment and Training Administration** and the **Wage and Hour Division**.

Penalties

When violations are found Wage and Hour may assess a civil money penalty not to exceed $5,000 per crewmember employed in violation and other appropriate remedies. During the course of an investigation, Wage and Hour may enter a "cease and desist" order against the employer. Any interested party may request a hearing on the Wage and Hour Administrator's determination before an administrative law judge and any interested party may petition the Secretary of Labor to review the administrative law judge's decision. During the period when a "cease and desist" order has been entered, an employer may not utilize D-visa crewmembers. Vessels owned by an employer found in violation of this program will not be permitted to enter

U.S. ports and may be precluded from future access to the D-1 program for up to one year.

Relation to State, Local and Other Federal Laws

Various other laws may be applicable to the employment of these workers such as the **Fair Labor Standards Act**.

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Migrant and Seasonal Agricultural Worker Protection

DISCLAIMER

Updated April 1998

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), as amended

(29 U.S.C. §1801, et seq.)

Who is Covered

The Migrant and Seasonal Agricultural Worker Protection Act protects most migrant and seasonal agricultural workers in their interactions with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing. However, in certain circumstances, some farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing are exempt from MSPA under limited circumstances.

Basic Provisions/Requirements

The MSPA requires that farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing who recruit, solicit, hire, employ, furnish, transport or house agricultural workers meet certain minimum requirements in their dealings with migrant and seasonal agricultural workers. Among these requirements are:

Farm labor contractor registration: Farm labor contractors (and any employee who performs farm labor contracting functions) must register with the U.S. Department of Labor before recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal agricultural worker. Agricultural employers and associations (and their employees) need not register as farm labor contractors. An agricultural employer or association using the services of a farm labor contractor must first verify the registration status of the farm labor contractor, including that the contractor is properly authorized for all activities he or she will undertake. A toll-free number (800-800-0235) is available to verify registration status.

Employment relationship: Under certain circumstances, an agricultural employer or association who utilizes the services of a farm labor contractor may be determined to be a joint employer of the agricultural workers furnished by the farm labor contractor. In joint employment situations, the agricultural employer or association is equally responsible with the farm labor contractor for compliance with employment-related MSPA obligations--such as the proper payment of wages.

Disclosure: Each migrant and seasonal day-haul worker must be given a written disclosure at the time of recruitment containing the terms and conditions of his or her employment. All seasonal workers must be provided such disclosure upon request when offered employment. The disclosure must be in the language of the worker. The employer must also post in a conspicuous place at the job site **a poster setting out the rights and protections** afforded workers by MSPA. A housing provider must post or present to each

worker a statement of the terms and conditions of occupancy.

Information and Recordkeeping: Each farm labor contractor, agricultural employer or association who employs any agricultural worker must make payroll records for each worker containing the basis on which wages were paid, the number of piecework units earned, number of hours worked, total pay for each pay period, amount and reason for any deductions, and the net pay. Each worker must be provided with this itemized statement and these records must be kept and preserved by the employer for three years. If a farm labor contractor is performing the payroll function, the contractor must provide a copy of the pay records to the person to whom the workers are furnished (e.g., agricultural employer or association) and that person must keep the records for three years. No farm labor contractor, agricultural employer, or association may knowingly provide false or misleading information to a worker concerning employment or the terms and conditions of employment.

Wages, Supplies, and Working Arrangements: Each person employing agricultural workers must pay all wages owed when due. Farm labor contractors, agricultural employers and associations are prohibited from requiring workers to purchase goods or services solely from such contractor, employer or association or any person acting as an agent for such a person. In addition, no farm labor contractor, agricultural employer or association may violate the terms of the working arrangement without adequate justification.

Safety and Health of Housing: Each person who owns or controls migrant housing is responsible for ensuring that the facility complies with the substantive Federal and State safety and health standards covering that housing. Migrant housing may not be occupied until it has been inspected and certified to meet applicable safety and health standards. The certification of occupancy must be posted at the site.

Transportation Safety: Each vehicle used, or caused to be used, to transport agricultural workers must be properly insured, operated by a properly licensed driver, and meet Federal and State safety standards.

Employer Protections: Farm labor contractors must comply with the terms of any written agreement they enter into with an agricultural employer or association.

Enforcement: The Wage and Hour Division of the U.S. Department of Labor enforces MSPA . During a MSPA investigation Wage and Hour investigators may enter and inspect premises (including vehicles and housing), review and transcribe payroll and other records, and interview employers and employees.

Assistance Available

Copies of **Wage and Hour publications** may be obtained by contacting the nearest office of the **Wage and Hour Division** listed in most telephone directories under U. S. Government, Department of Labor. Information about farm labor contractor applications can be obtained from the nearest State employment service office or any **Wage and Hour Division offices**.

Penalties

Violations of MSPA may result in civil money penalties, back wage assessments, and revocations of certificates of registration. Violations may also result in civil or criminal actions instituted by the Department against any person found in violation of the Act. Civil money penalties up to $1,000 may be assessed for each violation. Criminal conviction for first time violators may result in one year in prison and a $1,000 fine; repeat convictions can result in up to three years in prison and $10,000 in fines. In addition, individuals whose MSPA rights have been violated may seek civil money damages in Federal court.

Relation to State, Local and Other Federal Laws

MSPA supplements any State or local law. Compliance with MSPA does not excuse violation of applicable State law or regulation.

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